

RECEIVED
CENTRAL FAX CENTER
JUN 20 2008

DECLARATION UNDER 37 CFR §1.131
Serial No. 10/820,790

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicant: **Samir Gurunath Kelekar** Docket No: **Q71531**
Serial No.: **10/820,790** Filed: **April 09, 2004**
Examiner: **GELAGAY, SHEWAYE** Group Art Unit: **2137**
Confirmation No.: **8715**

Title: **SYSTEMS AND METHODS FOR REAL-TIME NETWORK-BASED
VULNERABILITY ASSESSMENT**

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being transmitted by facsimile under 37 C.F.R. §1.8 on March 18, 2008 and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Facsimile No: (571) 273-8300.

June 20, 2008
Date

/Dr. Samir G. Kelekar/
Signature

SIR/ MADAM:

DECLARATION OF PRIOR INVENTION
UNDER 37 CFR §1.131

I, Samir Gurunath Kelekar, declare as follows:

1. I am the inventor of above-captioned patent application.
2. The invention which forms the subject matter of the above-captioned patent application was conceived of and reduced to practice on or before January 1, 2003, as evidenced by Exhibit A and Exhibit B enclosed herewith.
3. Exhibit A is a copy of a Business Plan that was shared with an industry expert, Mr. K. Ramdass for consultation on or before January 2, 2003, as part of discussions to raise

DECLARATION UNDER 37 CFR §1.131
Serial No. 10/820,790

funding for technologies, some of which form the basis of the present application. Mr. K. Ramdass was requested to perform a review of the Business Plan. After review, Mr. K. Ramdass sent the reviewed Business Plan to the inventor. Exhibit A further includes the email through which the reviewed Business Plan was received from Mr. K. Ramdass.

4. Exhibit A describes the Business Plan, which is based on technology concepts, parts of which are covered by the present Application. Mr. K Ramdass is an industry and business expert in the general technology area in which the invention was made. The Business plan was submitted with Mr. K. Ramdass on or before January 3, 2003 as part of the review of the product Business Plan for attracting investors, and reflects the amount of progress made in conceptualizing, developing and reducing the practice, the general concept behind the present application.

5. Exhibit B is a copy of the Non Disclosure Agreement (NDA) signed by the inventor with Mr. K. Ramdass for the purpose of discussion of the Business Plan (Exhibit A), and the Business Plan sent to Mr. K. Ramdass. The NDA was signed on January 1, 2003.

6. Exhibit B describes that the technology concepts presented in the Business Plan are a bonafide work of the inventor, and are being shared with Mr. K. Ramdass for purpose of business discussion only.

7. The invention was made in India, which became a WTO country on January 1, 1995, which is earlier to the date of invention.

8. The inventor directs the attention of the Examiner to Exhibit A (the Business Plan). On page 10, section 5 describes:

"The product idea is a straightforward one. The product will consist of a VA component, another component that fixes security holes automatically, and a third component that tracks services and their configuration files via hooks, and signals to the first two components when a particular configuration changes or a particular service gets started. The first two components then take over, figure out what new vulnerabilities have been created, and fix them automatically. The aspect of tracking services all the time, and

DECLARATION UNDER 37 CFR §1.131
Serial No. 10/820,790

dynamically intimating the VA tool and fixing the vulnerabilities automatically is entirely new and is the real value-add in all this. This idea should be patentable"

9. The above text indicate that the concept of tracking (start and stop of) services, and tracking changes in configurations with the help of hooks (which can be implemented as an agent), and subsequent vulnerability assessment tests to find what new vulnerabilities have been created when new services are started or existing services reconfigured was in possession of the inventor at least as early as January 3, 2003.

10. The Inventor further respectfully directs the Examiner's attention to page 14, section 7.3, of the Exhibit A:

"7.3 The Services-tracker component

The key component in the product is the services-tracker component. This component tracks, using hooks, whenever a particular services that accesses a UDP, TCP port or one accessing the IP protocol is started, or if configuration files of such services are changed. It also tracks whether passwords of services that are accessible from the network are changed. This technology is being currently developed via a prototype and should be patentable."

As is known in the art, one way to implement the hooks is via an agent. Therefore, the text above clearly indicates that the inventor was in possession of the invention on or before at least the date of Exhibit A, that is January 3, 2003.

11. The inventor further submits that after the review of the Business Plan (Exhibit A) by Mr. K. Ramdass, the inventor started the process of learning about and seeking patent protection.

12. Documents pertaining to the above sequence of events, from the time of sharing the Business Plan to the filing of the US provisional patent application are available, and shall be provided should the Examiner require the same.

**DECLARATION UNDER 37 CFR §1.131
Serial No. 10/820,790**

13. The inventor requests the Examiner that the Business Plan and the NDA, which are Non Patent Literature (NPL), not be disclosed in public domain. Especially, the Business Plan is a confidential and sensitive document, having commercial significance. The Business Plan and the NDA are presented to the Examiner for establishing earlier invention, and accordingly, the inventor respectfully requests that these documents not be made public.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

June 20, 2008

Date

/Dr. Samir G. Kelekar/

DR. SAMIR GURUNATH KELEKAR

Enclosures: **02**

1. Exhibit A – 26 pages
2. Exhibit B – 03 pages

BEST AVAILABLE COPY